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19. ENDANGERED SPECIES

Law failing to recover species, lawmaker's report says

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Preparing a legislative effort to revamp the Endangered Species Act, the chairman of the House Resources Committee released a report today blasting the law as fraught with data problems and failing to recover species.

The 84-page report from Rep. Richard Pombo (R-Calif.) uses federal data to highlight his concerns over the act's recovery issues and data problems, as well as the spending and litigation that it has brought about.

The document foreshadows what the committee may consider in its legislation on ESA, which staff said they expect within the coming weeks. Pombo said the report would serve as a guide in efforts to revise the law.

Pombo and Rep. Greg Walden (R-Ore.), Senate Wildlife Subcommittee Chairman Lincoln Chafee (R-R.I.) and Sen. Mike Crapo (R-Idaho) announced earlier this year that they would work together to "improve and update" the species protection law.

The Senate will kick off its review later this week, with a broad oversight hearing that will hear from top Bush administration officials, property rights advocates and environmentalists -- its first public action since that announcement,

In lashing out against the act, the lawmakers have emphasized its record of listing thousands of species but only recovering 10 of them.

Some environmentalists have argued that focusing on those numbers does not give credit to the ongoing, incremental recovery and protection of the species still listed.

A draft obtained by *Greenwire* shows that Fish and Wildlife Service scientific information reveals a slim margin of listed species are improving. The report says 6 percent of species are improving, 30 percent are stable, 21 percent are declining, 2 percent are possibly extinct and 39 percent are in uncertain status.

The committee's oversight and investigations team compiled the report -- an overall review of the act's implementation and spending -- using hundreds of federal documents, including *Federal Register* notices for delisted or downlisted species, expenditure reports, agency reports to Congress and critical habitat rules.

"No reasonable person can look at the federal agency numbers here and defend the status quo for the ESA," Pombo said. "It has clearly become a question of *how* we improve this law, not a question of *if*."

But Patti Goldman, an attorney with Earthjustice in Seattle argued Pombo still may not be giving the act enough credit for keeping species from extinction.

"Recovery is obviously the goal, but it may take a long time to achieve," Goldman said. "The immediate question

to ask is whether it has prevented extinction so we may be able to get to recovery?"

The report argues that "after three decades more progress should be demonstrable through species that have recovered and been delisted."

The report also highlights problems with data errors. Federal officials have discovered new populations or new information on species after their listing that has led to 15 delistings out of 33 total species ever delisted, and half of the downlistings.

Resources Committee spokesman Brian Kennedy said such errors are unacceptable, especially because the costs that states, the federal government and private landowners can incur in the meantime can be so high. The report finds that federal agencies have spent from \$34,000 to almost \$9 million on individual species with erroneous data.

Meanwhile, the costs of litigation are largely unknown, since they are primarily borne by the Justice Department attorney salaries. As of last February, federal officials were defending themselves in 33 active ESA lawsuits, covering 43 different species, according to the report.

The report's recommendations include: requiring more rigorous criteria for determining endangered and threatened species; making a greater distinction between threatened and endangered species listings; and allowing an easier, more streamlined process for Section 4 determinations, which allow the agency to grant exemptions for actions that may harass or harm a species if it is "necessary and advisable to provide for the conservation of such species."

Committee staff said this year's ESA efforts are also likely to include some elements of the critical habitat revisions and "sound science" bills they passed last year.

Goldman questioned whether those efforts would improve ESA's recovery rate.

"It would seem that if we're not getting to recovery fast enough, [the government] needs to do a lot more to stop activities and spend the money that they need to spend," Goldman said. "If we're not seeing enough recovery, we need to strengthen the act, rather than weaken it."

Goldman and other environmentalists argue that the current act could more effectively save and recover species if implemented more forcefully.

For instance, FWS released last week a new "candidate notice of review" list, saying that 286 species qualify as candidates for listing as threatened or endangered species under ESA. The agency said the species warranted protection but that other activities precluded acting on the listings.

More than three-fourths of the species have been awaiting listing for 10 or more years and 26 percent have been in limbo for 25 or more years, according to an analysis by the Center for Biological Diversity.

"The Endangered Species Act is an effective tool for saving wildlife from the abyss of extinction, and the administration isn't using it," said CBD's Noah Greenwald.

But the committee's report notes how costly the process would be for moving these species into ESA protection. The proposed and final listing rules and critical habitat rules and accompanying economic analyses and NEPA assessments can cost more than \$550,000 all together. So listing and designating the 283 candidates that were on the list before last week would cost over \$150 million.



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